

ORIGINAL



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BEFORE THE CORPORATION COMMISSION

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Commissioners

GARY PIERCE – Chairman

BOB STUMP

SANDRA D. KENNEDY

PAUL NEWMAN

BRENDA BURNS

2012 APR 20 P 4: 19

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 20 2012

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF A  
RATE INCREASE

DOCKET NO. W-04254A-08-0361

DOCKETED BY	<i>mn</i>
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IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY,  
LLC FOR APPROVAL OF A FINANCING  
APPLICATION

DOCKET NO. W-04254A-08-0362

MOTION TO STAY

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BY THE INTERVENER:

On October 30, 2009, the Commission issued Decision No. 71317, establishing permanent rates for Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock") and authorizing Montezuma Rimrock to incur long-term debt in the form of a Water Infrastructure Finance Authority of Arizona ("WIFA") loan in an amount up to \$165,000, for the purpose of completing an arsenic treatment project as described in the decision.

On April 27, 2011, in response to a request filed by Montezuma Rimrock, the Commission voted at the Commission's Staff Open Meeting to reopen Decision No. 71317 pursuant to A.R.S. 40-252 to determine whether to modify the decision concerning financing approval and related provisions.

On March 15, 2010, the Yavapai County Board of Supervisors issued a Use Permit for Montezuma Rimrock to use Well #4 for commercial purposes, contingent on Montezuma Rimrock obtaining a Certificate of Compliance within one year.

Stipulation 5 of the Certificate of Compliance required the Company to comply with all federal, state and county regulations. The Company failed to meet this requirement within the first year.

On April 5, 2011, Yavapai County extended the deadline to obtain the Certificate of Compliance to April 5, 2012.

On April 9, 2012, Yavapai County Department of Development Services revoked Montezuma Rimrock's Use Permit for Well #4. (Exhibit 1).

Montezuma Rimrock was unable to meet Stipulation 5, in part, because Well #4 violates the Yavapai County Water Code. The water code requires wells to have a 50-foot setback from neighboring property lines. No spot on the residential parcel meets this requirement.

Intervener is also a Plaintiff in a lawsuit in Yavapai County Superior Court (P1300CV201000585) challenging the Board of Supervisor's approval of the Company's Use Permit for Well #4.

On March 26, 2012, Montezuma Rimrock filed a cross-claim against Yavapai County seeking to have the Yavapai County Water Code ruled invalid.

On April 5, 2012, Plaintiff filed a motion to dismiss Montezuma Rimrock's cross-claim.

On April 9, 2012, Yavapai County joined Plaintiff's motion to dismiss Montezuma Rimrock's cross-claim. (Exhibit 2)

On April 11, 2012, the Arizona Department of Environmental Quality issued a Notice of Violation to Montezuma Rimrock for failing to comply with Consent Order No. DW-36-10. The Order required the Company to have the arsenic treatment plant installed by April 7, 2012. (Exhibit 3)

In light of the revocation of Montezuma Rimrock's Use Permit for Well #4, the pending litigation in Yavapai County that will determine whether the Yavapai County Water Code is valid, and, in turn, whether Well#4 can ever be activated, and the Notice of Violation filed by ADEQ, it is not in the best interest of the company, its ratepayers and the public for proceedings in this docket to continue at this time.

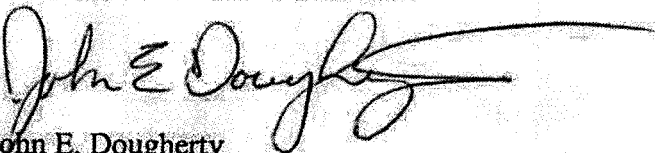
Ms. Patricia Olsen's proposed lease and sublease agreements with Montezuma Rimrock, if approved, impose far higher costs on Ratepayers than the WIFA loan

approved in Decision No. 71317. It is premature to saddle ratepayers with an extremely expensive arsenic treatment facility when Montezuma Rimrock no longer has legal access to what was to be its primary production well and integral part of the ATF.

Montezuma Rimrock's gross mismanagement is exemplified by its expensive gamble on developing Well #4 in an inappropriate location. The Company's action has led to loss of the WIFA loan, revocation of its county Use Permit, issuance of an ADEQ Consent Order and subsequent NOV. This dire situation is compounded by the fact the Company is insolvent. (Dec. 14, 2011, Response to Interim Report, Exhibit 3)

**Intervener respectfully moves the Commission to Stay all proceedings in this Docket until the pending legal and administrative issues related to Montezuma Rimrock's Use Permit for Well #4 are settled in Yavapai County and the ADEQ Notice of Violation is resolved.**

Dated this 20<sup>th</sup> Day of April, 2012



John E. Dougherty  
Intervener

Copies of the foregoing mailed  
This 20<sup>th</sup> Day of April Mailed to:

Todd C. Wiley  
Fennemore Craig, PC  
3003 N. Central Ave.  
Suite 2600  
Phoenix, AZ 85012

Patricia D. Olsen, Manager  
MONTEZUMA RIMROCK WATER COMPANY, LLC  
P.O. Box 10  
Rimrock, AZ 86335

Exhibit 1

## YAVAPAI COUNTY Development Services

**Prescott Office -**  
500 S. Marina Street, Prescott, AZ 86303  
(928) 771-3214 Fax: (928) 771-3432



**Cottonwood Office -**  
10 S. 6th Street, Cottonwood, AZ 86326  
(928) 639-8151 Fax: (928) 639-8153

Addressing - Building Safety - Customer Service & Permitting - Environmental - Land Use - Planning

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April 10, 2012

Montezuma Rimrock Water Co LLC  
Patricia D. Olsen  
PO Box 10  
Rimrock, AZ 86335

RE: Well #4 Use Permit Revocation on APN#405-25-517 HA#H9139

Dear Patricia Olsen:

This letter is being written to notify you of the expiration (April 5, 2012) of your administrative extension for your approved Use Permit, hearing application number HA# H9139. The extension was granted for the period of one (1) year in order to obtain a Certificate of Compliance. The Board of Supervisors approved your request to construct a well site to service the Montezuma Rimrock Water Company on March 15, 2010. Stipulation number 5 of the approval states "Certificate of Compliance to be issued within one year of Board of Supervisors approval demonstrating that the use is operating in compliance with all applicable local, state and federal regulations".

Staff is formally revoking your Use Permit to allow the operation of Well #4 as part of the Montezuma Rimrock Water Company as of April 5, 2012.

Per Section 582.7., *Decisions by the Development Services Director which result in the voiding of a UP may be appealed to the Board of Supervisors, subject to an application for appeal being on file in the Development Services Department within thirty (30) days of notification of the UP being voided.* If you choose to appeal staffs decision, please have an appeal on file to the Development Services Department by May 10, 2012.

If you have any questions or concerns please feel free to contact me.

Sincerely,

Tammy DeWitt, Senior Planner  
Yavapai County Development Services  
Planning and Land Use  
Phone (928) 639-8151 Fax (928) 639-8153  
E-mail: Tammy.DeWitt@co.yavapai.az.us

COPY

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MAR 27 2012

Douglas C. Fitzpatrick  
49 Bell Rock Plaza  
Sedona, Arizona 86351  
(928) 284-2190  
Bar ID #005152  
[fitzlaw@sedona.net](mailto:fitzlaw@sedona.net)  
Attorney for Montezuma  
Rimrock Water Company LLC

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

JOHN DOUGHERTY;  
FREDERICK SHUTE

Plaintiffs,

-vs-

YAVAPAI COUNTY BOARD OF  
SUPERVISORS; MONTEZUMA  
RIMROCK WATER COMPANY, LLC  
DOES 1-10,

Defendants.

MONTEZUMA RIMROCK WATER  
COMPANY, LLC,

Counterclaimant,

-vs-

JOHN DOUGHERTY and FREDERICK  
SHUTE,

Counterdefendants.

Case No. P1300CV201000585

DEFENDANT MONTEZUMA  
RIMROCK WATER COMPANY, LLC'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

AND  
RESPONSE TO PLAINTIFFS'  
MOTION TO DISMISS

[Assigned to the Honorable  
Kenton D. Jones]

[Oral Argument Requested]

1 MONTEZUMA RIMROCK WATER )  
2 COMPANY, LLC, )

3 Cross-claimant, )

4 -vs- )

5 )  
6 YAVAPAI COUNTY BOARD OF )  
7 SUPERVISORS, )

8 Cross-defendant. )

9 Defendant Montezuma Rimrock Water Company, LLC, by its undersigned counsel,  
10 moves this Court for summary judgment on plaintiffs' first claim for relief in which plaintiffs  
11 allege that defendant's well [#4] violates the Yavapai County Water Well Code. The facts which  
12 support defendant's motion for partial summary judgment also comprise its response to  
13 plaintiffs' motion to dismiss. Accordingly, defendant consolidates its motion and response into  
14 one pleading.  
15

16 As to plaintiffs' first claim for relief, there is no genuine issue of material fact and the  
17 water company is entitled to judgment as a matter of law. This motion is brought pursuant to  
18 Rule 56, Arizona Rules of Civil Procedure, and is supported by the following Memorandum of  
19 Points and Authorities and Statement of Facts filed herewith.  
20

21 **MEMORANDUM OF POINTS AND AUTHORITIES**  
22

23 Plaintiffs and defendant water company appear to agree on the facts and law which are  
24 dispositive of both pending motions. Ultimately, the Court needs to decide whether the Yavapai  
25 County Water Well Code conflicts with its corresponding state code. If it does, it is invalid and  
26 preempted by state law.

27 The county ordinance prohibits placement of a well "in a location less than 50 feet from  
28

1 the boundaries of a parcel on which the well is proposed for construction."

2 The state code prohibits the drilling of a well "within 100 feet of any septic tank system,  
3 sewage disposal area, landfill etc." *R12-15-818*.

4 *ARS sec. 49-106* provides:

5  
6 "This section does not limit the authority of local governing  
7 bodies to adopt ordinances and rules within their respective  
8 jurisdictions *IF* those ordinances and rules do not *conflict*  
9 *with* state law *and* are equal to or more restrictive than the  
10 rules of the department." *[emphasis supplied]*

11 A critical determination for the Court is whether the county's ordinance conflicts with the state  
12 code. If it does, it violates *ARS sec. 49-106* and is invalid.

13 Plaintiffs argue that *ARS sec. 49-106* authorizes local governing bodies to adopt  
14 ordinances that are more restrictive than the state rules. *Plaintiffs' motion @ p. 2, ll. 9-10.*  
15 Plaintiffs' analysis overlooks the second prong of *ARS sec. 49-106* which requires that local  
16 ordinances not conflict with state law.

17 The Yavapai County Water Well Code conflicts with state law. The water company's  
18 well is more than 100 feet from the waste disposal system on its neighbor's parcel, in compliance  
19 with *R12-15-818* of the Arizona Administrative Code. Nonetheless, it is less than 50 feet from  
20 that same neighbor's shared boundary in apparent violation of the water well code. *Defendant's*  
21 *Statement of Facts #3 and #4.*

22  
23 That placement of defendant's well complies with state law yet violates the county's  
24 ordinance brings into focus the conflict between the laws. While, as plaintiffs argue, the county  
25 ordinance may be more restrictive than the state law, it nonetheless conflicts with state law. Such  
26 conflict renders the local ordinance invalid because it violates *ARS sec. 49-106*.

27 The objective of both the water well code and state law is to prevent contamination of  
28

1 potable water by nearby waste disposal systems. The protection afforded by state law which  
2 requires that wells be placed 100 feet or more from waste disposal systems is adequate to carry  
3 out the public policy concerns in question. The county water well code is both unnecessary and  
4 redundant give the protections afforded by state law.  
5

6 Given the undisputed facts which demonstrate the conflict between the Yavapai County  
7 Water Well Code and *R12-15-818*, the Court should find as a matter of law that the local  
8 ordinance violates *ARS sec. 49-106* and is invalid.  
9

10 DATED this 26th day of March, 2012.

11 LAW OFFICE OF DOUGLAS C. FITZPATRICK

12 BY   
13

14 Douglas C. Fitzpatrick  
Attorney for defendant MRWC

15 COPIES of the foregoing  
16 mailed this 26th day of  
March, 2012 to:

17 Honorable Kenton D. Jones  
18 Yavapai County Superior Court  
120 S. Cortez  
19 Prescott, Arizona 86303

20 Howard M. Shanker  
21 700 East Baseline Road, Bldg. B  
Tempe, Arizona 85283  
22 Attorney for plaintiffs

23 Jack H. Fields  
24 Office of the Yavapai County Attorney  
25 255 E. Gurley St.  
Prescott, Arizona 86301  
26 Attorney for Yavapai County Board  
of Supervisors

27   
28 Douglas C. Fitzpatrick



Howard M. Shanker (#015547)  
THE SHANKER LAW FIRM, PLC.  
700 East Baseline Road, Bldg. B  
Tempe, Arizona 85283  
Phone: (480) 838-9300  
Facsimile: (480) 838-9433  
[howard@shankerlaw.net](mailto:howard@shankerlaw.net)

Counsel for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

JOHN DOUGHERTY; FREDERICK  
SHUTE;

Plaintiffs,

v.

YAVAPAI COUNTY BOARD OF  
SUPERVISORS; MONTEZUMA  
RIMROCK WATER COMPANY, LLC,  
JOHN DOES 1-10,

Defendants.

No. P1300CV201000585

**PLAINTIFFS' MOTION TO  
DISMISS MRWC's  
CROSS/COUNTER-CLAIM  
PURSUANT TO RULE 12(b)(6)**

(Assigned to the Hon. Kenton D.  
Jones)

Plaintiffs hereby move this Court to dismiss Montezuma Rimrock Water Company's ("MRWC's") Cross/Counter-Claim pursuant to Rule 12(b)(6), Ariz. R. Civ. P. Dismissal is appropriate where, as in the instant case, the claimant is not entitled to relief under any interpretation of the facts susceptible of proof. *E.g., Doe ex rel. Doe v. State*, 200 Ariz. 174, 175 (2001). No facts are at issue. As discussed below, MRWC's Cross/Counter-Claim fails to state a claim upon which relief can be granted, as a matter of law.

MRWC asserts that: (1) State regulation R12-15-818 provides that "no well shall be drilled within 100 feet of any septic tank system. . ." (Cross Claim at ¶ 4); (2) the Yavapai

PLAINTIFFS' MOTION TO DISMISS  
MRWC'S CROSS/COUNTER-CLAIM

- 1 -

THE SHANKER LAW FIRM, PLC.  
700 EAST BASELINE ROAD, Bldg. B • TEMPE, AZ 85283  
TELEPHONE (480) 838-9300 • FACSIMILE (480) 838-9433  
[howard@shankerlaw.net](mailto:howard@shankerlaw.net)

1 County Water Well Code is more restrictive than the state regulation in that it provides that  
2 "[n]o well shall be approved for construction in a location less than 50' from the property  
3 boundaries . . ." (Cross Claim at ¶¶ 3,5,7 ); (3) "A.R.S. § 49-106 prohibits the adoption by  
4 counties of ordinances and codes which are more stringent than or conflict with the state's  
5 rules" (Cross Claim at ¶ 6); and (4) since the Yavapai County Water Well Code is more  
6 restrictive than the state regulation, it violates A.R.S. § 49-106 (Cross Claim at ¶ 7).

7  
8 Contrary to MRWC's assertion, however, A.R.S § 49-106 specifically authorizes  
9 counties to pass ordinances that are "more restrictive" than state rules. According to the  
10 statutory provision at issue:  
11

12 **[t]his section does not limit the authority of local governing bodies to adopt**  
13 **ordinances and rules within their respective jurisdictions if those ordinances**  
14 **and rules do not conflict with state law and are equal to or more restrictive**  
15 **than the rules of the department . . .**

16 A.R.S. § 49-106; *see also, e.g.,* A.R.S. § 45-596(G) (" . . . Before approving a well site plan .  
17 . . the county . . . shall review the well site plan and determine whether the proposed well  
18 location complies with applicable local laws, ordinances . . .").  
19

20 . . .

21  
22  
23 . . .  
24  
25  
26

1 MRWC's Cross/Counter-Claim fails as a matter of law – it should be dismissed  
2 pursuant to Rule 12(b)(6), Ariz. R. Civ. P.  
3

4 Respectfully Submitted this 23<sup>rd</sup> day of March 2012

5 THE SHANKER LAW FIRM, P.L.C.

6  
7  
8 By 

9 Howard M. Shanker  
10 THE SHANKER LAW FIRM, PLC.  
11 700 East Baseline Road, Bldg. B  
12 Tempe, AZ 85283  
13 Ph: (480) 838-9300  
14 Fax: (480) 838-9433

15 Counsel for Plaintiffs

16 Original and two copies of the foregoing  
17 Sent via U.S. Mail this 23<sup>rd</sup> day of March, 2012 to:

18 Clerk of the Court  
19 Yavapai County Superior Court  
20 2840 N. Commonwealth  
21 Camp Verde, AZ 86322

22 COPY of the foregoing mailed and (emailed)  
23 this 23<sup>rd</sup> day of March, 2012 to:

24 Jack H. Fields,  
25 Deputy County Attorney  
26 Office of the Yavapai County Attorney  
27 255 E. Gurley Street, Ste. 300  
28 Prescott, AZ 86301  
29 (Attorney for Yavapai County Defendants)

30 . . .

PLAINTIFFS' MOTION TO DISMISS  
MRWC'S CROSS/COUNTER-CLAIM

- 3 -

THE SHANKER LAW FIRM, PLC.  
700 EAST BASELINE ROAD, Bldg. B • TEMPE, AZ 85283  
TELEPHONE (480) 838-9300 • FACSIMILE (480) 838-9433  
howard@shankertlw.com

1 Douglas Fitzpatrick  
2 49 Bell Rock Plaza  
3 Sedona, AZ 86351  
4 (Attorney for Montezuma Rimrock Water Co.)

5 By Rosa Jones  
6  
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PLAINTIFFS' MOTION TO DISMISS  
MRWC'S CROSS/COUNTER-CLAIM

- 4 -

THE SHANKER LAW FIRM, PLC.  
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boward@shankersw.com

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

JACK H. FIELDS, SBN 012470  
Deputy County Attorney  
OFFICE OF THE YAVAPAI COUNTY ATTORNEY  
255 E. Gurley Street  
Prescott, Arizona 86301  
(928) 771-3344  
E-mail: [ycao@co.yavapai.az.us](mailto:ycao@co.yavapai.az.us)

Attorneys for Defendant Yavapai County

RECEIVED

APR 10 2012

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

JOHN DOUGHERTY;  
FREDERICK SHUTE

Plaintiffs,

vs.

YAVAPAI COUNTY BOARD OF  
SUPERVISORS; MONTEZUMA RIMROCK  
WATER COMPANY, LLC; DOES 1-10,

Defendants.

NO. P1300CV201000585

DEFENDANT YAVAPAI COUNTY  
OF SUPERVISORS' JOINDER IN  
PLAINTIFFS MOTION TO DISMISS  
CROSS/COUNTER-CLAIM

DIV. 4

Hon Kenton Jones

Defendants Yavapai County Board of Supervisors ("Yavapai BOS") hereby joins in Plaintiff's Motion to Dismiss MRWC's Cross/Counter-Claim against Yavapai BOS and Plaintiffs, for the reasons stated in Plaintiff's Motion.

WHEREFORE, Yavapai BOS respectfully request that Plaintiffs Motion to Dismiss MRWC's Cross/Counter-Claim be granted and MRWC's Cross/Counter-Claim be dismissed.

DATED this 9<sup>th</sup> day of April, 2012.

Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY  
By: Jack H. Fields  
Jack H. Fields  
Deputy County Attorney

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1

2

COPY of the foregoing mailed this

3

9 day of April, 2012, to:

4

Howard M. Shanker

5

*The Shanker Law Firm, PLC*

6

700 East Baseline Rd., Bldg. B

7

Tempe, AZ 85283

8

*Attorney for Plaintiffs/Counter-Defendants*

9

Douglas Fitzpatrick

10

49 Bell Rock Plaza

11

Sedona, AZ 86351

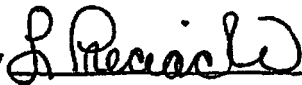
12

*Attorney for Defendant/Counter-Claimant/Cross-Claimant MRWC*

13

14

By



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Exhibit 3



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens  
Director

April 11, 2012

**CERTIFIED MAIL**  
Return Receipt Requested

Patricia D. Olsen  
Montezuma Rimrock Water Co, LLC  
P.O. Box 10  
Rimrock, Arizona 86335-0010

**Subject:** Administrative Notice of Violation, Public Water System #13-071  
Montezuma Rimrock Water Co, LLC – Case # 130760

Dear Mr. Olsen:

The attached **Administrative Notice of Violation ("NOV")** is an informal compliance assurance tool used by the Arizona Department of Environmental Quality ("ADEQ") to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an administrative order issued by ADEQ has occurred. It describes the facts known to ADEQ at the time of issuance and cites the provision(s) of the order that ADEQ believes the party has violated. The NOV in no way changes obligations or time frames specified within the administrative order.

An NOV does not constitute an appealable agency action. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected. Although the NOV states that ADEQ will agree to extend the NOV time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment, for violations(s) of an administrative order, ADEQ will agree to extend the time frames in the context of civil consent judgment only.

ADEQ reserves the right to take a formal enforcement action, such as filing a civil lawsuit or revoking/suspending an associated permit, regardless of whether the Department has issued an NOV. Neither ADEQ's issuance of an NOV nor its failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

Sincerely,

Marcia Colquitt, Manager  
Water Quality Enforcement Unit

Northern Regional Office  
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

Montezuma Rimrock Water Co.  
April 11, 2012  
Page 2 of 2

Enclosure:  
Amendment #1 to Consent Order DW-36-10 (Effective date June 2, 2011)

Cc:  
Vivian Burns, ADEQ Water Quality Enforcement Unit  
Vivian Adams, ADEQ Drinking Water Section

Steve Olea  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007-2996

Yavapai County Community Health Services  
Robert Resendes, Director  
1090 Commerce Drive  
Prescott, AZ 86305

---





Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007  
(602) 771-2300 www.azdeq.gov



Henry R. Darwin  
Director

CERTIFIED MAIL  
Return Receipt Requested

Case ID #: 130760

April 11, 2012

Montezuma Rimrock Water Co LLC  
Attention: Patricia D. Olsen  
PO Box 10  
Rimrock, AZ 86335-0010:

Subject: Montezuma Rimrock Water Co, Place ID 19794  
LAT: 34d, 39', 1" N LNG: 111d, 48', 9" W

## NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Montezuma Rimrock Water Co LLC as the owner/operator of Montezuma Rimrock Water Co has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during a file review completed on April 09, 2012.

### I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

#### **1. Administrative Order DW-36-10 - Section III (C)**

Notwithstanding the disposition of finding, MRWC [Montezuma Rimrock Water Company] shall complete construction of the approved arsenic treatment system and submit an administratively complete application for an Approval of Construction (AOC) for the treatment system described in Section III (B) [of Consent Order DW-36-10] no later than April 7, 2012.

Amendment #1 to Consent Order DW-36-10 became effective June 2, 2011. The Amendment requires MRWC to complete installation of an arsenic treatment system and submit an administratively complete application for an Approval of Construction (AOC) for the treatment system no later than April 7, 2012. To date, MRWC has not submitted an AOC for the installation of an arsenic treatment system.

### II. DOCUMENTING COMPLIANCE

1. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or submit to ADEQ all required information to complete the application for the AOC for the arsenic treatment system.
2. Within 7 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or contact Vivian Burns, ADEQ Water Quality Enforcement Case

Southern Regional Office  
400 West Congress Street Suite 433 Tucson, AZ 85701  
(520) 628-6733

Printed on recycled paper

Manager, at (602) 771-4608 to schedule a meeting with ADEQ.

### III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Vivian J. Burns, Water Quality Compliance Enforcement Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

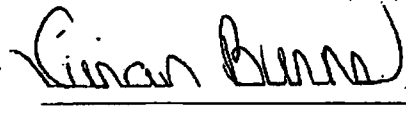
### IV. STATEMENT OF CONSEQUENCES

1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in this Notice as allowed by law.

### V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Vivian J. Burns at (602) 771-4608.

  
Marcia R. Colquitt, Manager  
Water Quality Compliance Enforcement Unit

  
Vivian J. Burns  
Water Quality Compliance Enforcement Unit